Map
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High Handed Proceedings on Vancouver's Island

ATTORNEY GENERAL'S OFFICE
MAR 17 1899
B.C.

- - OR - -

HOW SETTLERS WERE EVICTED IN 1895

Samuel Waddington in possession 25 years.
David Heggan in possession 12 years.
Others for a shorter period.

Evidence and Facts as to why existing rights of Agricultural Settlers could not heretofore be enforced against the Esquimalt and Nanaimo Railway Company.

W.L. (A.Y.)
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O. C.—Official Correspondence.
H. A. B.—Heggan's Appeal Book.
W. A. B.—Waddington's Appeal Book.
V. C. Co.—Vancouver Coal Company's correspondence with Dominion Government and Esquimalt and Nanaimo Railway Company.

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Evidence, Facts and Correspondence.

VANCOUVER ISLAND LANDS.

VICTORIA, B. C., Feb. 21st, 1899.

To the Honorable the Attorney-General Province of British Columbia:

SIR: I hereby beg leave to request the consideration of the Government of the following facts in connection with the action between David Hoggan (Plaintiff), and the Esquimalt and Nanaimo Railway Company (Defendant), as being just cause for the reconsideration of said case:

A.

1st. The main reasons for judgment were based on the perjured statements of at least two Government officials, charges against whom are now before the Attorney-General's Department.

2nd. The chief reasons for judgment in the Supreme Court of Canada was without foundation in fact, and contrary to all evidence.

3rd. Decision of trial judge not according to evidence and in direct opposition to facts.

4th. Robert Dunsmuir, President of the Railway Company, stated that, right or wrong, we would not get one acre if it were to cost him $10.000.

5th. While the land was in litigation the Railway Company conveyed part of the land occupied by David Hoggan, together with all his improvements, to the Provincial Government, thereby placing the Government in a position to openly oppose the claim of the said David Hoggan in defence of their own interest.

B.

Reasons why the Local Government should look into the said charges are:

1st. The existing rights of settlers have been interfered with contrary to section 5 of the Act, 1884, through undue influence as aforesaid.

2nd. By looking up the lands in question 848 acres have for fifteen years remained almost entirely uninhabited and altogether non-revenue producing.

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3rd. The finding of the Court is to the effect that the entire 724 acres in question cannot be used for other than townsite purposes.

4th. If said judgment means anything at all, the entire tract must remain for ever non-revenue producing to the Province in the event of Nanaimo not growing to such an extent in that direction, the Company's lands being for ever non-taxable.

5th. Considering the influence the Esquimalt and Nanaimo Railway Company were able to exercise over the late Government, the settlers found the argument of the late President of the said Company to have been too powerful for them thus far, namely: That, right or wrong, they would not get one acre if it were to cost him $10.000.

6th. Heretofore having been $ubjected to the tender mercie$ of certain learned gentlemen, I hereby (with the assistance of a common blacksmith) lay the facts before you, most of which can be substantiated by correspondence and evidence at the command of the Government, and humbly request that any lack in construction or arrangement may not prevent due consideration.

Sect. 7, sub. (1). 1. The Dominion Act 47 Vic, Cap. 6, is the Act under which the Island Railway Lands were to be administered and grants to settlers to be made under the Great Seal.

Vancouver C. Co. MSS. 18. 2. The Hon. Joseph Trutch, Commissioner, and in connection with the Vancouver Coal Co. vs. Esquimalt and Nanaimo Railway Co.'s correspondence with the Dominion authorities, held the view throughout to the effect as stated in letter dated Dec. 31st, 1883. He therein states that this land in question "is included in the conveyance to the Dominion under the Act recently passed, viz.: An Act relating to the Island Railway Lands of the Province FOR THE PURPOSE THEREIN STATED and therefore NOT SUBJECT TO BE OTHERWISE DISPOSED OF."

Clause (f) Settlement Act, 1884. 3. "The lands on Vancouver Island to be so conveyed SHALL, except as to coal and other minerals, and also except as to timber lands as hereinafter mentioned, BE OPEN for four years from the passing of this Act TO ACTUAL SETTLERS, FOR AGRICULTURAL PURPOSES, at the rate of one dollar an acre to the extent of one huudred and sixty acres to each such actual settler."

E. & N. Co.'s Deed. 70, line 34. 4. Section 23 of the said Act (1883) declares that the Company shall be bound by the sub-section (*f*) of the hereinbefore recited agreement.

Only in one instance are the Land Laws of the Province referred to, namely: In the Company's deed an interpretation is

placed on the question of payments for lands by settlers, and for that purpose alone is reference made.

5. And whereas by section 26 of said Act it was provided that the existing rights, if any, of any persons or corporations in ANY OF THE LANDS SO TO BE ACQUIRED BY THE COMPANY shall not be affected by this Act. E. & N. Co.'s Deed. 70, line 46.

6. And whereas by section 5 of the said Act it was provided that the Government of Canada should be entitled out of such excepted tract to lands equal in extent to those ALIENATED UP TO THE DATE OF THE SAID ACT BY Crown Grant, PRE-EMPTION OR OTHERWISE, within the limits of the grant mentioned in the said section 3. E. & N. Co's D. 70, line 8.

B. C. GAZETTE, JUNE 19TH, 1884.

PUBLIC NOTICE—ISLAND RAILWAY LANDS.

7. Notice is hereby given that on and after the 1st of June next ALL THOSE LANDS which are reserved for railway purposes on Vancouver Island WILL BE OPEN FOR PRE-EMPTION by actual settlers at the rate of one dollar per acre as PROVIDED BY THE TERMS OF THE SETTLEMENT ACT 47 VIC., CH. 14. Squatters who have occupied and improved ANY OF THE LANDS WITHIN THIS TRACT should make immediate application for a record of the same upon printed forms for the purpose, which can be obtained from the Government Agent for the District O. C. 13.

WILLIAM SMITHE,
Chief Commissioner of Lands and Works.

Victoria, B. C., May 7th, 1884.

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8. "Seeing that the Province was suffering by reason of so much land being tied for railway purposes, and that intending settlers were being lost to the Province, the Government adopted a method as stated by D. W. Gordon (M. P. for Nanaimo District), on the floor of the House of Commons August 18th, 1891, as follows: 'The Commissioners would take the application and put it on file so that when the lands were dealt with according to the laws of the Province for the time being, it was understood that he would get the first opportunity of purchasing that land at the time the Settlement Act was being passed. I felt assured that a great many of these settlers would feel it a hardship in this way—and it is this point to which I wish to call the attention of the Minister of Justice (Sir John Thompson)—that instead of going on this land with a view of grabbing it away from the Crown, they were induced by local representatives to go there with Hansard, 1891. 4205.

the assurance that they had better settle there than go into Washington Territory that they had better take their chances and when land came into the market they would have the first opportunity.' "

PEACEABLE POSSESSION.

9. The settlers who were evicted from lands in question in 1895 had occupied the land as follows:

Samuel Waddington for twenty-five years.

David Hoggan for thirteen years.

Peter Brodie and E. Hodgson for a shorter period.

Samuel Waddington had been improving the land for fourteen years prior to the passing of the Settlement Act, 1884, and David Hoggan for two years and one month. Hoggan was on the land two years and twenty days previous to the formation of the Railway Company.

H. A. B. Q. 732. 10. Hoggan held peaceable possession by reason of his application having been received on a form supplied by the Government Agent at Nanaimo March 19th, 1882, and in 1884, when calling at the Land Office in answer to a public notice, was informed that he was too late to come in as a squatter, but to go back again and would no doubt come in as a pre-emptor.

Journals, 1886. XIII. 11. On August 31st, 1885, Hoggan applied to the Chief Commissioner of Lands and Works at Victoria, through his agent, Mr. C. C. McKenzie, enquiring as to the reasons for delay in granting his certificate of record. He received no reply until on Oct. 13th, following, Robert Dunsmuir called at the office of C. C. McKenzie, and in the presence of Hoggan and agent stated that at his request Smithe had delayed sending an answer, so as to give him an opportunity of seeing them both in relation thereto. Mr. Dunsmuir offered Hoggan fifteen acres, including all his improvements, amounting to about $4,000.

Journals, 1886. XV. 12. McKenzie wrote the Chief Commissioner Oct. 19th, calling his attention to the circumstances and refusing the offer. Hoggan received a letter from Smithe dated Victoria, B. C., Oct. 29th, and for the first time gave Hoggan and others notice that the lands were not open for settlement. And for the first time it was made known to the settlers that the name of the lands on which they had for years been living was "Newcastle Townsite Reserve."

MSS. to Rothwell. Page 18. 13. The Hon. Thos. White, Minister of the Interior, while in Nanaimo, was waited on by upwards of twenty settlers. He stated that he had been led to believe that Hoggan was being settled with and did not know to the contrary until arriving here.

He also stated that he had advised Mr. Dunsmuir, both in his official and private copacity, to settle, but would see Mr. Smithe and Mr. Dunsmuir on his arrival at Victoria.

14. On Aug. 22nd, 1883, Samuel Waddington wrote the Chief Commissioner of Lands and Works as follows: Journals, 1886. LIV.

"DEAR SIR: Our member, Mr. Raybould, showed you an agreement of sale of the land I have been occupying previous to the lock-up. I desire to know (the railway question is settled) whether I can pay for the land, according to former agreement, and obtain my Crown grant."

15. The following answer was received and shown to the other settlers interested:

VICTORIA, B. C., 27th Aug., 1883.

SIR: In reply to yours of the 22nd inst., I have the honor to state, by the direction of the Chief Commissioner of Lands and Works, that at the next meeting of the Provincial Legislature a bill will be introduced to deal with the lands now reserved for railway purposes, and until that time you can only continue as a squatter.

I have, &c.,
(Signed) T. H. WILLIAMS.

S. Waddington, Esq.,
Nanaimo, B. C.

16. Ques. 104. Have you been in possession of the land since the year 1871? A. I have. Waddington Appeal Book.

Q. 105. That is so far as you can be in possession of those 133 acres? A. I have been working on it. 105.

Q. 106. And have exercised the rights of ownership over it? A. Yes; well, they told me of course, Mr. Pearse, when they would not let me have it—they said the Government refused to let me have the land, but they had no objection to my improving the land, and they would let me have it when it came into the market. 106.

17. In 1884 Samuel Waddington, in answer to the public notice, called at the Land Office to prove up his claim, but was refused. Robert Dunsmuir was at the office door and referred him to Smithe. Waddington interviewed Smithe and was informed that there was a dispute between them and the Government, but to rest assured he would get the land, no one else would get it. W. A. B. 203, 204.

It was not until Oct. 29th, 1885, that Waddington was notified that he would not get the land.

18. The following evidence was given before the Courts in Victoria in 1890 by Marshal Bray, Government Agent: Have been Government Agent ten years last June. Hoggan made application for land in March, 1882. I did not allow him to pre-empt. It was just an informal application to pre-empt or purchase. WHEN HE MADE THAT APPLICATION I REFUSED IT.

H. A. B. Q. 734. Q. 734. On receiving the application did you write for instructions to Victoria? A. I did not.

19. An interesting letter from the Government Agent to the Surveyor-Ceneral, Mr. Gore, extracts of which are as follows:

NANAIMO, B. C., Sept 7th, 1885.

Journals, 1886. (1). SIR: I have the honor to acknowledge receipt of your letter from F. G. Richards, jr., enclosing a copy of letter from C. C. McKenzie in reference to D. Hoggan's application to record land in the GOVERNMENT RESERVE, NORTH AND JOINING NEWCASTLE TOWNSITE.

(2). My letter of INSTRUCTIONS DATED THE 20TH MAY, 1884, in reference to my issuing records for Island Railway Lands was to the effect that I should not issue any records of any land embraced in townsites or Government reserves, and when the Hon. Mr. SMITHE was up here last fall, he gave me instructions to the same effect, and TOLD ME NOT TO ISSUE ANY RECORDS for any (3) land IN NEWCASTLE TOWNSITE OR THE GOVERNMENT RESERVE TO THE NORTH OF SAME until I received instructions from the Government to do so. Several parties have applied to me to pre-empt in this same reserve, and I have informed them that until I received instructions I cannot issue records for any land included in said reserve.

(4). *I informed Mr. Hoggan of this and told him as soon as the land was open for pre-emption I would let him know, so that he could get in his application at once.*

(5). * * * Now he did not occupy said land until after date of his application filed in this office, 19th, March, 1882. * *

(6). And to follow the Land Act, Hoggan has never strictly occupied the land he claims, as he has never lived on any portion of the land, either himself, his agent, or his family; * * * *

(7). Please to inform me if this reserve is likely to be thrown open soon for settlement, as James Harvey (Dunsmuir's son-in-law) has also made application for some land in this reserve.

I have, &c.,

(Signed) M BRAY,
Government Agent.

W. S. Gore,
Surveyor-General,
Victoria, B. C.

20. To understand the above letter it must be considered that the department are commencing to let the settlers down easy. The application of Hoggan's reads: "Bounded on the south by the Newcastle Townsite and Government Reserve." Not applying for land in Government Reserve as will be seen later. Hoggan's land not yet considered on townsite, but adjoining.

This is a fruitful letter and supports the evidence of Hoggan before the Courts later on in every particular, making due allowance for pressure. It proves the absolute falsity of the statement referred to by the trial judge, namely: "That leave was refused because the land was part of the Newcastle Townsite Reserve." H.A.B. Q. 717 Much and all as the learned judge might have wanted him to say so, and although Mr. Bray, according to his own letter, proved himself to be an extremely pliable witness, yet he did not make use of such a statement, even in evidence.

The strength of the argument in support of "reserve" will be seen on consideration of the fact that there appears to have been nothing in the Land Office at Nanaimo to indicate to the Government Agent that there was any other reserve than the townsite and suburban lots, known in the District as the Townsite and Government Reserve, containing in all 114.62 acres while, when the case was up in Victoria in 1890 the strong arguments were based on the land registry at Nanaimo. There was nothing in Victoria to show otherwise than that those alleged reserves remained "proposed reserves," as slipped from the learned judge during the trial.

(2). Letter of instructions not to issue records of Island Railway Lands in question dated 20th May, 1884, and also verbal instructions to the same effect.

It will be noticed that the instructions were not given because of an existing reserve, but with the expectation of being permitted by the Dominion authorities to so make the reserve, as will be shown. The instructions were temporary and not such as would be given in case of a reserve.

Again, even the Chief Commissioner, according to instructions, acknowledges the alleged "Government Reserve" to be distinct from the townsite and to the north of same.

(4) According to Bray's own letter he encouraged Hoggan that he would get the land after having received his application three years previous.

(5). After having sworn to the contrary, 1890, Bray in his letter, 1885, admits that the application of Hoggan was filed in the Land Office in 1882, as testified by Hoggan in 1890.

(6) As to the statement that "neither Hoggan, agent or family never have lived on the land."

At the time Bray wrote this letter, Sept. 1885, Hoggan, his mother and her family all lived together on the land—in all about fourteen persons.

(7). Like Mr. B. W. Pearse, Assistant Surveyor-General in 1870, like Smithe, Chief Commissioner of Lands and Works in 1883, when he recognized Waddington as a squatter. Mr. Bray, who had for years been Government Agent at Nanaimo, could not see any reason why the lands in question should be withheld from settlement for agricultural purposes.

Journals, 1885. XVII.

21. Although the Government Agent in 1890 testified that he did not receive any application from Hoggan, yet we find in another letter written by the same Mr. Bray, and dated at Nanaimo, B. C., Feb. 19th, 1886, enclosing the application from Hoggan and others, and requests the Surveyor-General, Mr. Gore, to return them as they may be of service in this office in the event of the land being thrown open.

Knowing the facts as he did, that those letters and applications had all been laid before the Select Committee on Public Lands and all published in the Journals of the Legislature, 1886, is it possible that the Government Agent would have so openly committed himself had strong pressure not been brought to bear on him and, without assurance, from a reliable source that the Sessional Papers, Journals, and even official copies of public documents, would be successfully objected to before the Court?

22. Comparisons are made between the price, $5 per acre paid by Waddington and others and the $1 per acre, for which the settlers on lands in question claimed 160 acres. It is to be considered that lands in question at $75 per acre, including timber, minerals and all substances whatsoever, would have been at that time a lower price than $1 per acre, with only a perpetual right to till such portions of the soil as the Esquimalt and Nanaimo Railway Company should not at any time require.

23. Throughout the entire judgments all references to the land in question are either not founded on evidence or fact or they are made in a manner to convey the impression that such lands had a value other than for agricultural purposes.

BEFORE THE COURTS IN 1890.

H.A.B. Q. 255, 257.

24. Mr. Gimmell, a farmer, testified that in 1882 the land was not considered valuable.

H.A.B. Q. 300, 302

25. C. C. McKenzie, ex-M. P. P: for Nanaimo: The land in question was not valuable in 1885. The town lots in fact had

no value up to the time the Esquimalt and Nanaimo Railway Company began to sell lots in Newcastle Townsite, about 1888.

26. Marshal Bray, Government Agent: Since 1884 the lots increased in value. Before that property was not of much value. H.A.B. 744, 745. Q.

It will be noticed that Bray is speaking of the so-called "Town" known as "Townsite," which even up to the time of the trial was inhabited only by Indians.

27. Sir Joseph Trutch: Q. Do you know that this is still open land here—unoccupied? A. I don't know anything about it. H.A.B. 701, 706. Q.

Q. Are there any houses on what is called the townsite? (town). A. Yes. H.A.B. Q. 702.

Q. How many? A. Very few. H.A.B. Q. 703.

Q. Have you any idea how many? A. Well, I could not tell you how many. H.A.B. Q. 704.

Q. Are there any white people living there? A. I don't know. H.A.B. Q. 705.

Q. Do you know that what few people are living there are Indians? A. I don't know anything about it. I really don't know who is living there. I know there is an Indian rancherie on part of it. I have seen that from the water frequently. H.A.B. Q. 706.

Now the land occupied by Hoggan is altogether outside this uninhabited so-called "town," which should be sufficient evidence (as it was to the Government Agent) that such lands were to be considered as being agricultural lands only.

28. An extract from Commissioner Rothwell's Report, wherein he lays great weight on the information supplied the Department of the Interior by the Hon. (now Sir) Joseph Trutch, then resident agent of the Dominion Government at Victoria. The following is given as evidence that the entire land in question was to be laid off in town lots. It is to be considered:

(1). That the statements were made by an every-day auctioneer.

(2). That said statements were only verbal and made in 1860

(3). That said statements depend entirely on the memory of Mr. Trutch.

(4). The nature of Mr. Trutch's memory as exhibited before Courts in 1890.

(5). That said alleged statements as others made by the same gentleman were never carried into effect.

Rothwell's Report. 27, "After public notice, sales by auction of those lots, or a part thereof, were held at the Land Office, Victoria, and at the Court House, Nanaimo, at which sales a plan of the town named thereon, 'Newcastle Town,' was exhibited, on the faith of which, and on the understanding of the statements of the auctioneer, that the whole remainder of this reservation would in due course be also laid out into lots and offered for sale 'from time to time—these lots sold were purchased.' "

The following evidence given so soon after the report—of which the aforementioned is an extract—will furnish interesting food for reflection. Sir Joseph Trutch called and sworn:

H.A.B. Q. 674. Pooley to witness: Q. Do you remember in the year 1860, or thereabouts, attending any sale held by the Government of lots at Newcastle. A I do. I attended a sale and bought four lots.

H.A.B. Q. 680. Q When you saw that plan exhibited at that sale did you consider that all the land on the plan was included in Newcastle Townsite?

Objected to by Mills.

H.A.B. Q. 681. Q. Did you recollect whether any remarks were made by the auctioneer at that sale?

Mills: I object to that

Pooley: He was the Government Agent.

Mills: His instructions are in writing.

Witness: Remarks were made by the auctioneer.

Richards: The auctioneer was simply employed to sell the lands, not to bind the Government

Court: Your objection may appear quite clear when the next question is put. Merely the fact of the auctioneer having made remarks is harmless.

Pooley: That is the point I should like to argue with Your Lordship, because he is an agent of the Government. I have asked Sir Joseph Trutch whether the auctioneer at that time made any remarks with regard to this plan.

Court: And I asked Mr. Richards to wait until you asked the next question, that is all.

Pooley (to witness): Q. Do you recollect what they were? A. No. I could not tell positively what they were. *If you refer me to any particular remark I might remember it.*

As a witness Sir Joseph was exceedingly accommodating, for he appeared perfectly willing to allow Mr. Pooley, who may not have heard the statements made at all to hear them now for him, thirty years after the auctioneer had spoken. This farce, to put it mildly, confirms our contention throughout. Was Sir Joseph drawing a salary to give such advices to the Dominion Government as Mr Pooley might be required by the Esquimalt and Nanaimo Railway Company to communicate through him?

29. Q. When occupying the position of Chief Commissioner of Lands and Works, were any applications made for leave to purchase or pre-empt this land or any portion of it? A. Yes. H.A.B. Q. 668.

Q. Were these applications allowed? A. One application was allowed during my absence from the Colony. H.A.B. Q. 689.

Q. What application was that? A. Mr. Waddington's. H.A.B. Q. 690.

Q. Do you know how many acres he was allowed to purchase? A. Twelve acres. H.A.B. Q. 691.

Q. Did he wish to purchase more? A. He wished to purchase more. H.A.B. Q. 692.

Q. Did you allow him to purchase more? A. I recommended that he should not be allowed to purchase more land. H.A.B. Q. 693.

If Sir Joseph had not answered question 689 as he did, the entire evidence goes to show that application was made by Waddington (as stated in his evidence, Q. 11) for twenty acres of land. It would appear by the evidence of Sir Joseph himself that he had considered that application and recommended that only twelve acres be allowed instead of twenty. It would appear by his last answer to question (not quoted) 693 that he was struck with the nature of his own evidence.

Now sir, notwithstanding question 689, I refer to other valuable evidence on this point:

30. There were nine letters between Samuel Waddington and the Lands and Works Department on this question that were laid before the Select Committee, 1886. The first letter I find is dated November 2nd, 1870, wherein Waddington applies to increase his quantity to twenty acres as originally applied for. If this was an open transaction where is the original application for the twenty acres and the correspondence showing the agreement as to purchase price and sale by the Department? If as reasonably to be expected there were such correspondence, why was it not brought down before the Select Committee? The application could scarcely have been cut down in the Surveyor-General's Department for we find the following letter:

Journals, 1886. XVI.

VICTORIA, B. C., Nov. 7th, 1870.

31. SIR :—In reply to your letter, dated 2nd inst, I have the honor to inform you that I see no objection to your increasing your quantity as shown on rough sketch, upon your getting your land surveyed and paying for the same at the rate first agreed upon.

B. W. PEARSE,
Assistant Surveyor-General.

Samuel Waddington,
Nanaimo, B. C.

32. Waddington afterwards received a letter from Trutch dated Dec. 2nd, 1870, wherein the permission by Pearse is cancelled and further sale deterred until the spring, when the—never fulfilled—promised survey would be made. In that letter Trutch does not state that the application was entertained in his absence; but it was the Government who had made a special arrangement in his case. That would explain the reason as to why the Surveyor-General was unaware of the reasons for the limitation. Who then in the Government, excepting Mr. Trutch, had the authority to consider the application, make the reduction from twenty to twelve acres and authorize the sale to be made. The entire facts bear the construction that instead of the application in the first instance having been made in the absence of the Chief Commissioner, Mr. Trutch, as stated in evidence; there was a special arrangement in this case as stated by himself in his letter, and that himself and the Governor were the only persons consulted. After his return from Eastern Canada he found that the extention of grant had been made which he disallowed.

33. The answer to question 689 is the strongest argument yet produced against the contention of a reserve. If Mr. Trutch had died while absent, Mr. Waddington and other applicants would have got any land they might require in this as any other locality, as there was nothing in the Lands and Works Department to indicate any such reserve.

34. It has been shown that on May 20th, 1884, the Government Agent at Nanaimo was instructed not to issue records of lands in question until further advised.

O. C. Page 3.

35. On June 3rd following the Hon C. E. Pooley wrote the Minister of Railways and Lands at Ottawa, by direction of the Railway Company, asking to be allowed to reserve lands in question for townsite purposes, and requesting that the matter be placed before the Dominion Government at the earliest convenience, with a view to having the necessary authority granted and arrangements made.

36. On the 11th of the same month the Chief Commissioner of Lands and Works of the Province followed up the letter of Pooley with one from himself, stating that the Government of British Columbia approves of the proposition and considers it in the interest of settlement that the proposed arrangement be made. O. C. Page 4.

37. Mr. H. M. Fessault in his report in connection therewith clearly shows that the Government of British Columbia were to be the agents of the Government of Canada for administering the lands for the purpose of settlement and that all lands previously set apart for railway purposes were open for settlement, and that the lands in question herein form part of the lands vested in the Dominion Government by an Act of the Legislature of British Columbia and therefore the assent of the Governor-General in Council will be required; but it appears to me that before such assent is asked for a letter might be sent to the Chief Commissioner of Lands and Works of British Columbia requiring him to obtain from the Company a general map or plan showing the locations of such townsites and other information, together with the statement as to whether any portion have been and are already occupied by squatters, etc., and all such information as may satisfy the Government of Canada as well the Government of British Columbia that the assent of the Governor in Council can be safely given to the proposed arrangements.

The settlers are, however, not aware that either the Railway Company or the Chief Commissioner have ever forwarded the required information, although the entire lands in question were occupied and improvements made to the extent of thousands of dollars.

38. This matter was further dealt with from the Department of Justice, Ottawa, July 21st, 1884, and after referring to the Statutes governing these lands, concludes with the following extract: O. O. Pages 4-5

"I find nothing in the agreement or in the Act which authorizes the Government to consent to any of the lands being reserved for townsites, and without such authority I am of opinion that the Government of Canada have no right to give such consent.

"GEORGE W. BURBIDGE,
A. P. Bradley, Secretary. "D M. J."

39. It has been stated (by the Colonist) that this is a matter for the Dominion Government; that the Provincial Government were only the agent acting for the Dominion. If that is correct, why did the agent over-ride the owner? The Provincial Government have a work to undo.

40. The Railway Company, not satisfied with their agreement, sought to acquire by stealth the rights of the agricultural settlers. With such a decision on the part of the owner (the Dominion Government) the duty of the agent (the Provincial Government) was clear. The letters of both Pooley and Smithe are in themselves absolute proof that they had no right to issue such an order forbidding any of the railway lands from being open to pre-emption record.

41. The settlers had existing rights from the fact that they held peaceable possession with the full knowledge and consent of the Government, and had made improvements to the extent of thousands of dollars before the Railway Company was formed or the Settlement Act passed, and with a full knowledge of these facts the clause in said Act pertaining to squatters on Island Railway Lands was specially framed to cover two settlers

42. The Act covering railway lands on the Mainland made full provision for these squatters who had been induced to settle on the land up to the time of the passing of the said Act, but in the clause governing squatters on Island Railway Lands it required a one year, eleven months and nineteen days occupation previous to the passing of the Act, 1883, before they could claim a squatter's rights.

Seeing that one having settled at any time after the passing of the Act would be in no different position from one who had settled any length of time previous, one is led to wonder why a different clause had been introduced for the Island.

It will be found that David Hoggan had settled on the land one year, eight months and twenty-one days previous to the passing of the Settlement Act, so it is clear that had the stipulated time been one year previous to the passing of the Act it would not shut Hoggan out from the double claim of being a squatter. If two years had been stipulated, then when the Dominion Act, 1884, became the governing Act Hoggan would still come in as a squatter, hence the necessity to state: "One year prior to the 1st day of January, 1883." It looked better.

One provision like this might pass as an accident, but we find the act governing railway lands on the Mainland allows any one who has made substantial improvements the right to come in as a squatter, but on Island Railway Lands substantial improvements cut no figure. A continuous occupation for one year prior to the date mentioned is required to entitle one to the rights accorded squatters. Why all this twisting of the law? We find that Samuel Waddington, who had made substantial improvements on the land he was improving and had applied for, had

lived on the twelve acres purchased in 1870, and which was bounded on three sides by the land applied for. This slight of hand piece of legislation has answered its purpose thus far, but I desire to call the attention of the Government to Section 26 of the Act governing those lands.

"The existing rights (if any) of any persons or corporations in any of the lands so to be acquired by the Company shall not be affected by this Act."

Also to Section 5 of the same agreement.: "Provided, always that the Government of Canada shall be entitled out of such excepted tract to lands equal in value to those alienated up to the date of this Act by Crown Grant, pre-emption or otherwise, within the limits of the grant mentioned in Section 3 of this Act. I submit that the last two clauses quoted throws aside this enactment to cover two persons and makes the Act governing the Island the same as that governing the Mainland in that respect" Laurier in Hansard, 1891. 4177.

The following extracts are from the Railway Company's deed:

"And whereas by section five of the said Act it was provided that the Government of Canada should be entitled out of such excepted tract (north of Seymour Narrows) to lands equal in extent to those alienated up to the date of said Act by Crown Grant, pre-emptor or otherwise within the limits of the grant mentioned in the said section three."

"And whereas by section six of the Act it was provided that the grant mentioned in section three of the said Act should not include any lands then held under Crown Grant, lease, agreement for sale, or other alienation by the Crown, nor should it include Indian Reserves or Settlements or Naval or Military Reserves."

45. If the above clauses will not exclude lands settled on prior to the passing of the Settlement Act, 1883, from passing to the Dominion Government, the following should:

"And whereas by section twenty-six of the said Act it was provided by the existing rights, if any persons or corporations in any of the lands so to be acquired by the Company should not be affected by the said Act nor should it affect Military or Naval Reserves."

46. The object of section five was to secure for the contractors the full amount of the land it was originally intended that they should receive. Sections 6 and 26 provide for all settlers who have gone on any of the railway lands during the alleged lock-up (Mills declares there was never any reserve on railway land) and as the contractors were to get lands in lieu of the alienations, they also acquired the minerals. There is no provision that the said Hansard, 1891. Page 4201.

contractors shall receive minerals under any lands not to be acquired by them, so it remains clear (notwithstanding the clause referring to squatters) that whether said lands were ever reserved or not; that all persons who had existing rights prior to the passing of the Settlement were to be treated as pre-emptors or purchasers, or settlers on ordinary Crown lands and acquired all therein, thereon and thereunder. Lands in question did not pass to the Dominion Government, and it is therefore within the rights of the Provincial Government to grant pre-emptions to those who settled prior to passing of the Settlement Act, and no other. The Government of British Columbia being the creature of the Esquimalt and Nanaimo Railway Company has been the cause of the "studdied cold-blooded indifference" of the past.

Respectfully submitted.

47. Almost the entire misconception has been caused by the introduction of misleading terms used to designate lands not in question as being in question, namely: "Reserve for Public Purposes," "Reserve," "Town," "Townsite," "Newcastle," "Newcastle Townsite," "Suburban," "Newcastle Townsite Reserve."

Journals, 1886. IX.

48. The facts are: In 1860 F. W. Green agreed to survey into town and suburban lots a tract of land to the north and adjoining Nanaimo City, said tract containing 114.62 acres and named on the map prepared by him "Newcastle Town."

49. By referring to the agreement it will be found that the 80 lots were to be known as the town and the 25 lots ranging to upwards of six acres each were called the suburban lots, or commonly known to residents in that vicinity as "Townsite" and "Government Reserve."

IX.

50. The only official map of any of the 1,074 acres is the one prepared by Green in 1860, containing 114.62 acres.

51. Excepting the 724 acres that has been called a reserve for public purposes the other names all apply only to the 114.62 acres, and not rightly to that, for in 1874 the town of Newcastle was taken into Nanaimo City limits, and in 1875 the first taxes paid on said lands were paid to Nanaimo City, the balance were sold by the City for taxes (Government lots excepted).

52. There has been no survey gazetted of the balance of the 1074 acres as required by 42 of Act 144 Revised Statutes of British Columbia, 1871, also by Section 60 of British Columbia Land Act, 1875, and by Section 31 of British Columbia Land Act, 1884, for the reason as stated by the Surveyor General, Mr. Gore, that there has been no survey made. There can therefore be no official map.

By following the evidence of Gore before the Select Committee 1886, and before the Courts in 1890, the force of so many names will be apparent. They all apply to the 114 62 acres, except "reserve for public purposes"

Gore produced an examined copy of the official plan of the *Newcastle Townsite Reserve.* H.A.B. 566-569.

"Mr. Pooley: Witness produces the official map of the land known as Newcastle Townsite." H.A.B. 581.

Ques. You produce a copy of what is called the *official map of the town of Newcastle*? A. Yes.

Gore: The land colored red upon this (*Hoggan's plan*) does not cover the same ground that is marked "*Newcastle*" on this plan. H.A.B. 654.

54. Seeing that Commissioner Rothwell and the various judges allowed themselves to be misled on this point, I beg leave to point out the true character of the Surveyor-General as a witness.

In answer to a question by Mr. Raybould, M. P. P., in 1886, Mr. Smith, Chief Commissioner of Lands and Works, stated: "The *Newcastle Reserve* contains 724 acres." Journals, 1886. Page 18.

Before Select Committee. Pooley to Gore: What quantity of land is contained in the *Newcastle Townsite Map?* A. About 648 acres. Journals, 1886. XIII.

Beaven to Gore: What is the acreage surveyed into lots as the *Newcastle Townsite map* deposited in the office? A. About *126.62* acres were laid out in lots and streets, including twelve acres sold to Samuel Waddington 6th October, 1871. (Grossly misleading.)

Gore to Beaven: *Green's survey is 114.62 acres,* including streets, but not including twelve acres sold to Waddington. Journals, 1886. IX.

Gore: *The Newcastle Townsite map* above referred to was *made by W. F. Green in 1860.* Journals, 1886. XIII.

Stanhope Farwell, Surveyor-General (1873) to Beaven: "There is *no other official map of Newcastle Town* except the one I have produced, that I am aware of." Submitted by Gore before Select Committee, 1886. Journals, 1886. IX.

55. The following extract from the agreement made with Green in 1860 clearly shows what is meant by "town and suburban lots": "The suburban lots to be laid out and marked as agreed above for the town lots (80 of); and the main road through the said suburban lots to be continued through the town as shown to the water." H.A.B. Page 78

56. A proper understanding of this matter will show the greater part of the judgments to apply to the town and suburban lands and not to the unsurveyed lands outside as applied for by the various settlers.

The misunderstanding arose through the misleading answers throughout the evidence of the Surveyor-General, both before the Select Committee and the Courts, as will be seen by the following:

H.A.B. 581. 57. Gore produced before the Courts an examined copy of the map of the Town of Newcastle.

Court to witness: Show the land included in that. A. All this land.

H.A.B. 585. Is all that land Newcastle Townsite Reserve? A. *I have always understood it to be so*, of course I should qualify that perhaps, north of the Millstone river.

58. Now sirs. As the entire alleged reserves (containing 974 acres, together with 100 acres for roads,) are north of the Millstone river, where does the qualification come in? The Surveyor-General knows that a qualification should have been made, but he does not make it. If Mr. Gore would have answered this one question truthfully it would have broken down statement three of defence, which, as stated in judgment, is the main question at issue.

H.A.B. 596. 60. How could that map show 959.38 acres of unsurveyed lands?

61. If the Surveyor-General believed this tract to have been reserved lands, the question put was broad enough to admit of an unqualified answer in the affirmative.

W.A.B. Q. 64. 62. Samuel Waddington testifies before Courts that he is at least one mile away from the town lots (meaning his twelve acres surveyed by Mohun).

Rothwell's Report. Page 4, sect. 9. 63. The damaging effect of the misleading statements of the Surveyor-General will be seen from "Rothwell's Report on Hoggan's case. He refers to Green's survey as being 126 acres.

64. Survey of Green, 1860, 114.62 acres plus 12 acres by Mohun in 1890 = 126.62.

65. The erroneous statement of Rothwell shows Waddington's twelve acres to be part of the town, whereas he is a mile away from it. That is precisely what the Railway Company conspired to show, together with the assistance of those who should have acted as the guardians of the people's rights.

These, and many others, are matters that Rothwell was appointed to enquire into, and not to accept statements unfounded on facts.

66. Might it not strike one as being entirely out of reason to even think of planting 250 acres of an Indian reserve in the centre of a townsite. Hence the wisdom of the Government in not executing such a proposition if it had ever been made.

67. Before the Select Committee, 1886, the Surveyor-General, William Sinclair Gore, testified that the land applied for by Hoggan was shown on map of Newcastle Town, 114 62 acres. Journals, 1886. IX.

68. Elijah Prielt, land surveyor, in 1890 testified before the Courts that the land applied for by Hoggan does not include any part of the town or suburban lots. "It is outside of the town lots as shown on this (his) map, and not as they have marked it here (prepared by order of Pooley). H.A.B. 343-347.

69. Before the Courts there was no evidence to the contrary, and the Surveyor-General, although seven times was asked to say whether the land applied for by Hoggan took in any of the townsite or town lots, yet he refused to substantiate the statement made before the Select Committee. H.A.B. 616-625. H.A.B. 634-635. H.A.B. 652-654.

70. Although the statements made before the Select Committee by the Surveyor-General in 1886 was proved to be erroneous before the Courts in 1890, yet the entire judgment of the Supreme Court of Canada is based on the erroneous understanding that the land claimed by Hoggan is part of the suburban lots shown on the map of the Town of Newcastle.

71. Mr. Beaven on hearing Gore state that the land applied for by Hoggan was shown on the Town of Newcastle, moved that Hoggan be invited to appear before the Select Committee. Seconded by Semlin and carried. Journals, 1886. IX.

72. The departments at Ottawa had suspended action on the settlers cases awaiting the report of said committe, and knowing the value of a good report, the Hon. C. E. Pooley, Secretary and Counsel for the Esquimalt and Nanaimo Railway Company, and being Chairman of said Committee, failed to see that the resolution was carried out, and the Hon. Theodore Davie, Attorney-General, Counsel for Esquimalt and Nanaimo Railway Company and Secretary of the Select Committee appointed to enquire into the grievances of settlers on Esquimalt and Nanaimo Railway and other lands, failed to so notify David Hoggan as directed by resolution of said committee to that effect. Burgess O.C. 12

73. Hoggan was therefore not permitted to successfully refute the erroneous statements made by the Surveyor General, O.C. Page 18-19

and on which George W. Burbidge, Deputy Minister of Justice, based his report against the settlers, every one of which statements were not according to fact and not substantiated in evidence before the Courts.

Journals, 1886. XX. 74. The Surveyor-General failed to produce the most important letter among the correspondence, and in the face of the fact that a special resolution was passed calling for letters between stated dates, Mr. Gore appeared before the committee without the letter. On motion of Beaven the committee adjourned to the Lands Department and found the letter. Mr. Gore stated that he did not make a second search, although directed by a special resolution to do so.

W.A.B. Q. 973. 75. Mr. Gore did the same thing before the Courts. A subpœna was delivered to the Surveyor-General demanding that an examined copy of the most important letter in Waddington's case be produced. He appeared without it and innocently protested that he could not produce the original. Later on, when the required copy was produced by force of circumstances and duly certified to by the Surveyor-General as being part of the records of the office, it was ruled out. After the Attorney-General had cited "Taylor" to show that certified copies of public documents are admissible as evidence. and having been sustained they apparently had not the hardihood to object to this letter, but the Court, equal to the occasion, calls their attention to the fact that: "*But it is not objected to. You are sitting there.*"

H.A.B. Page 90. Line 40-44. 76. Justice Walken in judgment states: "In 1882 he (Hoggan) applied at the Government Land Office at Nanaimo for leave to pre-empt the land he now claims. That leave was refused because the land was part of the Island Railway Reserve, as well as part of the Newcastle Townsite Reserve. He made no appeal to the Courts here, as he might have done against this refusal."

77. The above finding is based on the perjured statements and otherwise contradictory evidence of the Government Agent, Marshal Bray, and goes farther than even the evidence of that gentleman will permit.

Had the Court allowed Plaintiff's counsel to read from the Sessional Papers as he did counsel for Defence, the Government Agent would not have felt so secure in making what he knew to be false statements.

H.A.B. Q. 717. 78. Evidence of Bray: "I told him (Hoggan) that this was part of the 'Newcastle Reserve.'"

It will be seen that the word "townsite" has been added by the learned justice, and, appearing as it does in the judgment, acts as a convenience to the Railway Company.

79. I have already shown that the name "Newcastle Townsite Reserve" and other names were not real names, but part of a conspiracy for a desired affect, and to show the evidence on which the judges actually do not base their judgments I quote the evidence of the chief witness for the Railway Company, the Surveyor-General, William Sinclair Gore:

Gore in answer to questions: This reserve marked "Government Reserve" is the reserve in question known as the "Newcastle Townsite Reserve" "A," included within that block is an Indian reserve of 79 acres as explained in "Exhibit N." "Newcastle Townsite Reserve" is only a title that it has in the Land Office. I could not tell you when we began to call it by that name. I do not know where the term "Reserve for public purposes" is taken from. It is not so marked on any of our maps. I have not found any action by any official, Governor of the day, Attorney-General or Minister of Lands and Works setting it apart. I am not aware of any official authority for calling it "Newcastle Townsite Reserve." H.A.B. Page 64 Q. 1-14.

81. "Exhibit N" referred to is simply a letter, together with a proposed plan of proposed reserves, or as put by Gore a plan merely sketched and not from actual survey. This will be seen from the fact on the sketch "N." "B" is said to contain 100 acres, whereas a survey shows 40. "C" is said to contain 71 acres, whereas a survey shows 131. H.A.B. Page 64 Q. 3.

82. Mills to Gore: Were those 724 acres, or any portion of them, ever reserved by a proclamation or by Gazette notice? (Note what Gore attempted to show.) A. It was reserved by direction of the Governor, of which I can show you a copy, at least a proof. Here is a letter with this memorandum, duplicate of plan sent to Mr. Dallas with letter 30th March (1860). H.A.B. Q. 661.

Court: You will notice those are proposed reserves?

Q. Was that gazetted or proclaimed a reserve? A. I don't know that it was. H.A.B. Q. 663.

Q. But of your own knowledge do you know of any? A. No. H.A.B. Q. 665.

Q. And that was merely a letter between the Governor and Mr. Pearse. H.A.B. Q. 666.

Q. Can you tell me whether the 724 acres have ever been surveyed? A. I cannot. H.A.B. Q. 667.

This piece of land you call Newcastle Reserve—724 acres? A. I have not searched for, and do not know of any survey having been made of it. H.A.B. Q. 668.

H.A.B. 655-658. 83. The Surveyor-General admitted in evidence that the alleged reserves are not included in the list in answer to a return to an address to the Legislative Assembly, 1873. Page 6

W.A.B. Page 43 84. In the face of the evidence quoted, and much more the learned Justice Walkem in the case of Waddington (immediately following that of Hoggan) states the following as "Reasons for judgment."

Owing to the reporter having left the Court when the judgment in this case, which was an oral one, was given, it was not reported at counsel's request. I now give it as far as I recollect it, in writing for the purpose of appeal. The exhibits upon which I determined the case, and which I had before me at the time were as follows:

(*a*) 85. Nanaimo District Government Record (Exhibit H) of a reserve in 1855 of 724 acres "for public purposes," 250 acres for Indians, and 100 acres for roads—as agreed upon between the Home Government and the Hudson's Bay Company.

(*b*) 86. The Crown Colony (V. I.) surveyor's plan showing the above reserves as laid out by him, by the then Governor's instructions, with accompanying letter to the Governor of March 28th, 1860, (Exhibit N).

87. When Justice Walkem made that statement (*b*) he was fully aware that there had been no survey of the 724 acres, or of the alleged 250 acre Indian Reserve referred to in (*a*). It was shown by Court himself that "Exhibit N" refers only to proposed reserves. Gore has just shown that "N" is merely a sketch or proposed plan. The agreement by Green shows this: The survey as per agreement was to lay out 80 town and 25 suburban lots comprising in all 114.62 acres. There is no mention of an Indian Reserve of 79 acres or of 724 acres in the agreement or in the plan prepared by him. The Indian Reserves "B & C" as shown on sketch form no part of the lands referred to in "Exhibit H," but are to the south of Nanaimo.

H.A.B. 91. Line 8-14. 88. The following from the decision of Justice Walkem: "In 1885, that is, before the railway was completed, the Plaintiff again applied through his agent, Mr. McKenzie and this directly to the head of the Land Department, Mr. Smithe, for leave to pre-empt. Leave was refused in writing on the ground that the land he claimed had for years past been part of Newcastle Townsite Reserve.

He never appealed from this decision, nor did he make any protest in respect of it to the Dominion authorities.

89. That finding is without foundation on fact or evidence and is absolutely untrue. That Hoggan applied in 1885 to the

head of the Land Department is true, but that "he was refused." is not true. If Court has read the evidence before the Select Committee, 1886, and published in the Journals he has read the *letter withheld by Gore* (Oct. 19th) from the Select Committee, wherein C. C. McKenzie on the 31st of Aug., 1885, as agent for David Hoggan, applied to Smithe, to which there was no reply until Oct. 13th, when Robert Dunsmuir, President of the Esquimalt and Nanaimo Railway Company, called at the office of C. C. McKenzie at Nanaimo, and in the presence of Hoggan and his agent, C. C. McKenzie, stated that the Chief Commissioner of Lands and Works had submitted their letter of Aug. 31st to him, and that he had requested Mr. Smithe to delay sending an answer so as to give him (the President) an opportunity of seeing David Hoggan and his agent in relation thereto. Mr. Dunsmuir offered Hoggan fifteen acres of the land in question and all his improvements, amounting to upwards of $4,000.

Journals, 1886. XV.

O. C. 6.

The Attorney-General (Theodore Davie) and C. E. Pooley, solicitors for Defence, had this evidence before them in 1886, when they railroaded the Select Committee, as Chairman and Secretary of said Committee. If, on the other hand, the Court was unaware of these facts it was his own fault, for he stopped Plaintiff short in the middle of his answer and said: "Mr. Pooley objects to it *in toto* he objects to anything coming out about the land. Objection sustained."

H.A.B. Q. 93.

If that was a fair ruling, then Plaintiff in going into the Courts at all went out of his latitude.

Had Court not ruled by far in excess of the objection by Pooley it would have been shown that the President of the Esquimalt and Nanaimo Railway Company had led the Hon. Thos. White, Minister of the Interior, to believe that Hoggan was being settled with. *A copy of a public notice* was submitted as evidence that Robert Dunsmuir had assumed the control of lands in question, but it was no use. C. C. McKenzie wrote the second letter Oct. 19th following, calling the attention of Mr. Smithe to the fact that his client was not prepared to accept anything that was not just. And it was in answer to his second letter that Mr. Smithe forwarded the refusal in writing and dated Oct. 29th, 1885.

H.A.B. Page 19

90. Court: "That he never made any protest in respect of *it to the Dominion authorities.*"

The facts are that Hoggan, with other settlers did protest as follows:

The learned judge could have known full well that the settlers had protested to Ottawa for Waddington stated in his evidence on two occasion that his letters had gone to Ottawa. Defense, including Court, were careful not to question witness on that point.

W.A.B. Q. 100-101-128.

NANAIMO, B. C., Nov. 10th, 1885.

O.C. Page 16-17 *To the Hon. Thos. White, Minister of Interior:*

91. SIR: I have the honor to draw the attention of the Hon. Minister of the Interior to the refusal of the Government of B. C. to make and issue to Mr. David Hoggan of this city a pre-emption record of 160 acres of agricultural land, etc. * * * *

C. C. McKENZIE,
Agent for David Hoggan.

NANAIMO, B. C., Sept. 21st, 1886.

To the Hon. Thos. White, Minister of the Interior:

O.C. 10-11. 92. You are aware that our claims have been before you for over a year with regard to the unsurveyed lands adjoining Newcastle Townsite in Vancouver Island Railway Reserve. Whether it is the fault of our agent or the Department of the Interior we cannot tell; we feel confident that we have both law and justice on our side. The Settlement Act is very explicit so that no sophistry can explain it away. * * * We were in expectation that you would have settled this affair on the occasion of your late visit to this Province, but beyond seeing a paragraph in the newspaper to the effect that you had made satisfactory arrangements with the Local Government respecting the Island Railway Land, we have so far been disappointed in receiving such information respecting our position as would allay our anxiety to us, and more especially so as Mr. Dunsmuir, President of the Island Railway Company, has openly threatened that he has the money, and right or wrong we shall not get one acre if it costs him $10,000. Trusting you will reply soon,

We are yours respectfully,
SAMUEL WADDINGTON,
DAVID HOGGAN,
PETER BRODIE.

O.C. 11. 93. The Hon. Thos. White then wrote the Chief Commissioner of Lands and Works for information, closing his remarks as follows:

"It is therefore agreed that as to this question it should be left those immediately interested to seek their remedy before the legal tribunals. I shall be glad to have a line from you stating whether I have correctly understood the result of the conference that we had on the subject.

"THOMAS WHITE."

94. The moving hand appears to be the Chief Commissioner of British Columbia aiming to get claimants into the Courts.

95. Later on the claimants received instructions from the Department of the Interior that they having been refused by the Government of British Columbia are now in a position to institute legal proceedings in the local Courts in maintenance of any rights they possess. O.C. 11.

96. Hon. Gentlemen: Is the above not a successful refutal tion of the decision of the trial judge in one respect at least?

97. The following is an extract from the full report of the Minister of the Interior:

DEPARTMENT OF THE INTERIOR, Dec. 15th, 1885.

SIR: In accordance with your instructions I have the honor to report upon the claims respectively of David Hoggan and Samuel Waddington. * * * But in the meantime I take the liberty of pointing out for your information what in my opinion tends to show that whatever may have been the intention it is more than probable that Mr. McKenzie's contention in both his clients cases is *well founded*. * * * It will be for the Minister of Justice to say whether the provisions in Sub-Clause 1 of Clause 7 of the Settlement Act—that the lands shall be open to actual settlers for agricultural purposes—would have the effect of preventing the Government of British Columbia from issuing pre-emption records in regard to lands which have been especially set apart for other than agricultural purposes, even though such lands were neither naval nor military nor Indian reserves. In that case I submit that the Railway Company would have no claim to them whatever, as it appears to me that only such lands as have not been conveyed to the Railway Company are excluded by the Act from pre-emption entry. I respectfully submit that the papers in the case of Mr. Hoggan and Mr. Waddington along with this report be submitted for the opinion of the Minister of Justice. O.C. Page 14-16

(1). As to whether Messrs. Hoggan and Waddington, the Government of Canada as trustees under the Settlement Act have any right to interfere between the claimants and the Government of B. C.

(2). Or have any power to compel the Government of British Columbia to grant the claimants such pre-emption entries.

(3). As to whether, failing any action on the part of the Government of B. C., the Government of Canada is in a position to deal directly with the applicants in question.

I have the honor to be, sir,
Your obedient servant,
A. M. BURGESS,
Deputy Minister of the Interior.

O.C. 18-19.

98. In answer to the report of Burgess, the same Geo. W. Burbidge who in July, 1884, as previously stated, reported as follows: "I find nothing in the agreement or in the Act which authorizes the Government to consent to any of the lands being reserved for townsites and without such authority, I am of opinion, that the Government of Canada have no right to give such consent." I repeat that this same Deputy Minister of Justice who reported as above in July, 1884, did on his report of April 1st, 1886, and in answer to three questions submitted by the Deputy Minister of the Interior, entirely ignore said questions and without one single reference to any clause in the Act. In support of his opinion he reports: "I am therefore of opinion that Mr. Hoggan has no right to a pre-emption record of lands in the *Newcastle Town Reserve.*" The reasons given will be easily recognized, namely: "It appears there were certain lands which in 1855 had been set apart as a reserve for the Newcastle Townsite, and that these lands had a special sale for other purposes." Although there is no explicit provision in the agreement or the Act referred to to that effect, I think it is to be gathered from the agreement and from the Acts that the lands which were to be open for four years from the 19th day of Dec., 1883, to actual settlers were what could be considered agricultural lands, and that under the agreements and the Acts no one acquired a right to a pre-emption record of lands that had previously been reserved for townsites, and which as such had a special value apart from their use for agricultural purposes."

With reference to Waddington's case, Mr. Burbidge (now Justice Burbidge) states: "This case is somewhat stronger than Hoggan's. Waddington had by the Provincial authorities been recognized as a squatter on lands within the reserve to be used for agricultural purposes, I would be inclined to think that under the Acts referred to he would be entitled to a grant, but it is not, I think, clear that he has been so recognized, specially in view of the fact that his permission to occupy the lands for which he now claims the grant was by himself returned to the Commissioner of Crown Lands and Works."

Journals, 1886.

The only reason given as against the claim of Waddington is a misunderstanding on the part of the Deputy. By turning to the extreme end of the Journals of the Provincial Legislature and entirely apart from other correspondence in relation thereto will be found a letter from Waddington Aug. 22nd, 1883, explaining the error. The introduction reads as follows:

99. DEAR SIR: Our member, Mr. Raybould, showed you an agreement of sale of the land I have been occupying previous to the lock-up. I desire to know (the railway question is settled)

whether I can pay for the land, according to the former agreement and obtain my Crown Grant.

S. WADDINGTON.

To the Hon. the C. C. of L. & W. (Smithe).

100. On the 27th of August, 1883, Waddington received the permission to occupy the lands as a squatter, so it is clear that the permission to occupy as a squatter was not returned to the land office, but the former agreement held by him from B. W. Pearse, Assistant-Surveyor General.

101. The above only goes to show the influence against which the settlers had to contend. If the Railway Company and the British Columbia Government were not fully aware that the land in question never was even considered to be any part of a townsite, why did Pooley, representing the former on June 3rd, 1884, write the departments requesting that they be allowed to reserve land in question for a townsite. If the land was already a townsite, why the request to have it made as such? If it was not a townsite already, as they themselves understood it, they were too late, for claimants had already been recognized by the department as settlers.

102. No one knew better than the Deputy Minister of the Interior the pressure that was brought to bear on the departments on the case, and being fully satisfied in his own mind as to the rights of claimants he tied the Minister of Justice down to the three questions that HE (D M. J.) had his deputy wriggle out of in the manner as explained.

103. When it had been learned that A. M. Burgess had been sent out to British Columbia to enquire into the claims of over one hundred and twenty-five settlers, what pressure was brought to bear causing the return of the Deputy Minister of the Interior after he had got so far as Winnipeg?

104. See the predicament Dewdney, Minister of the Interior, put himself into by trying to explain this re-call on the floor of the House of Commons Aug. 18th, 1891. After having re-called Burgess he explained that he went out himself and found that "Hogle" (Hoggan) was on a "town plot," "that Mr. Hogle did not care about the minerals because he had jumped a town property, which was far more value to him than a coal property," etc., etc. Hansard, 4174-4214.

Why Burgess was re-called is plain. If he had been allowed to go to British Columbia he would have learned the facts as presented by both parties. Dewdney learned only from the Railway Company, Provincial Government, or others interested.

Dewdney proved to be a valuable man when in British Columbia, and therefore was afterwards appointed Lieutenant-Governor.

105. The following extract from a letter by D. W. Gordon, M. P. for Nanaimo, explains the position mildly:

To the Minister of the Interior:

O.C. Page 9. * * * One other matter I must bring to your notice and that is in two instances not far from Nanaimo, the Local Government have instructed their agent not to grant pre-emption records. From a personal knowledge of the locality I can see no good or valid reasons why such records should be withheld, except on the grounds of personal spite on the part of some one having the ear of the Local Government. There seems no authority in the Settlement Act to compel them to issue such records—they may issue them or they may not—their duty in that respect as agents being permissive. I should consider that in all such cases the Dominion Government should authorize some one else to issue records, maintaining of course in all cases the spirit of the Act. The lands in question form no part either in naval or military reserves, Indian reserves or Indian settlements, and have been in occupation for a long time by permission, their names are Samuel Waddington and David Hoggan. I have written you this long letter because of the information gained by an extended trip amongst the settlements, and after viewing their hardships and hearing their complaints, and because there is a feeling that information or advice is filtering through other channels into the department with other suggestions and other recommendations than those that I have made. Wherever I went the people have a reviving confidence that you will promptly bring all the unfortunate delays to a close.

D. W. GORDON.

106. The following are a list of dates on which, and purposes for which alleged reserve was made:

Journals, 1886. Page 28. Smithe, Chief Commissioner of Lands and Works. "The date of the reserve is not on record."

Journals, 1886. Page XII. Stanhope Farwell, Surveyor-General, 1873. "The date of which I am unable to ascertain."

Journals, 1886. Page 28. Smithe: It existed prior to 1885.

H.A.B. Q. 594-596. Gore, Surveyor-General, before Courts, 1890, in answer to a question by the trial judge, Justice Walkem, as to whether the date, May 7th, 1855, was the date of the reserve? Answered: "No, sir, the date on which certain moneys were paid," etc.

V.C.Co. MSS. 40 W. Tyrwhitt Drake in Vancouver Coal Company's correspondence: "Reserve made in 1857 or 1858 for public purposes."

Trial judge during trial, 1890: "You will notice those are only proposed reserve." H.A.B. Page 52 Line 20.

Trial judge in written judgment. "Reserve was made as I have said in 1855 for public purposes." H.A.B. Page 90 Line 27.

Trial judge Aug. 19th, 1890. "After argument Walkem, J., delivered a verbal judgment which, in the absence of the short-hand writer, was not preserved, but the following may be considered as the points decided by the learned judge." H.A.B. Page 91

"That the said land was *part of a townsite* and had been *so located* by successive Governments since *1855*."

Trial judge in written judgment for appeal: *This reserve must have been adopted as a site for the town of Newcastle* between the date of the Colonial Surveyor's report to the Governor in March, 1860, (Exhibit N), and that of the agreement between the same officer and Mr. Green in July, 1860. H.A.B. Page 89 Line 44.

Trial judge: "*The precise date* of the Governor's decision in favor of the townsite is in view of all that was publicly and officially done in relation to it, *immaterial*." H.A.B. Page 90 Line 32.

BEGBIE, C. J.: "In 1870 part of it was actually surveyed into town lots and an intended auction sale was announced, and it has ever since been termed Newcastle Townsite." H.A.B. Page 95 Line 26.

NOTE.—The above does not apply to Green's map of 114.62 acres, but the land in question.

Journals, 1873: Not included among other reserves in a return to an address to the Legislative Assembly, 1873. Page 6.

107. Surveyor-General, William Sinclair Gore, chief witness for defence: I cannot tell whether the 754 acres has ever been surveyed. I have not searched for and do not know of any survey having been made of it. It is not marked "Reserved for public purposes" on any of our maps. Could not tell when we began to call it Newcastle Townsite Reserve. I have not found any official, Governor of the day, Attorney-General or Minister of Lands and Works setting it apart as such. H.A.B. Q. 667-668. H.A.B. Page 64 Q. 1-13.

108. David Hoggan before Courts, 1890: Q. You stated in your examination in chief that you did not know that the land you claimed was part of the Newcastle Townsite Reserve? A. No, nor I don't believe it yet. H.A.B. Q. 172.

109. If the 79 acre Indian Reserve ever had an existence, how did it come to pass to the Railway Company?

110. If the date of the reserve was immaterial, why this arrangement to define one? H.A.B. Q. 593.

Pooley to Gore: Do you know when this was first laid off as a reserve? Gore wades and Court answers

Court: The official land registry of Nanaimo District contains this first mention of this reserve.

H.A.B. Q. 594. Pooley: What is the date of this reserve? Witness: The date is May 7th, 1855.

H.A.B. Q. 595. What is that document you hold in your hand? A. This is an extract from the land registry of Nanaimo District, compared. Plan marked "G."

Court: 7th May, 1855, reserved? A. No, sir; the date upon which the Company in London paid for section 1, 2 and 3, etc.

After Gore has evaded the first question, notice the wording of the answer by Court.

Witness, in answer to next question, unquestionably defines the date of the reserve May 7th, 1855.

Now just three questions previously witness had been explaining on the map he held in his hand lands in question, and had just explained that it was the official map of the town of Newcastle. 595 then is the most innocent question that could be asked, for there would be no question arising. Now notice the answer, and also the mental affect that would be produced in the mind of a hurried reader: 1st, mentioned in official land registry of Nanaimo District. Date of reserve May 7th, 1855.

Witness holds in his hands this extract from official land registry of Nanaimo District, compared. No one would think of looking to find the real nature of "G."

Now, after having allowed question 595 to have been put and answered, Court, as if surprised, exclaims May 7th, 1855, reserved? and witness giving a direct negative to his former positive answer will not likely be noticed by the reader as referring to anything but the former question, and at the same time allay any question that would naturally arise in the mind of the Hon. A. N. Richards, counsel for Plaintiff. S. Perry Mills, also counsel for the Plaintiff, may not previously have known of the circumstance. Whether there was a conspiracy or not, the definite date appears in the minds of every judge up to the Privy Council in England, although the Surveyor-General gave a decided "no, sir," when asked if May 7th, 1855, was the date of the reserve.

EXTRACTS FROM JUDGMENTS.

111. Trial Judge: "The Legislative transfer of the site by the Province to the Dominion could not change its character or, in other words, convert townsite land or plots into agricultural tracts of 160 acres each." H.A.B. Page 91 Line 39-42.

112 Begbie, C. J.: "Far less was it ever open to a man to squat on a townsite so as thereby *ipso facto*, to acquire any right whatever, even if he did fence in a town lot and dig and plant vegetables." H.A.B. Page 96 Line 3-6.

The above judgments, although entirely at variance with fact and evidence, are taken by the Courts above as findings of fact to the extent that the Lord Chancellor in the Privy Council refers to the main reason for judgment in the Supreme Court of Canada as follows: "It is put very shortly indeed on page 115. Mr. Justice Gwynne says: 'I cannot entertain a doubt that the Dominion Government as trustees for the Esquimalt and Nanaimo Railway Company took the lands vested in them by the Provincial Act, 47 Vic, C. 14, in the character in which those lands then were, namely, as lands set apart for suburban park lots of from three to five acres each, and that such lands were not open for settlement as agricultural lands, nor did they become so by anything which took place subsequently.'" Privy Council. Page 79.

And all the above in the face of all evidence to the contra notwithstanding.

113. Walkem, J., trial judge: "But it was, and still is, part of the Newcastle Townsite" H.A.B. Page 91-34.

114. The above finding is not according to the evidence of the Plaintiff, Elijah Priest, surveyor, Mr. Hammond, and even the Company's chief witness, the Surveyor-General. H.A.B. Q. 415-421.

The facts are: Mr. Pooley instructed a Mr. Hammond, a draughtsman in Esquimalt and Nanaimo Railway Company's office, to prepare a plan from a description supplied by Pooley. The description referred to a plan "hereto annexed" as more particularly describing the land. Mr. Hammond stated in evidence that he drew the plan according to description, but did not conform to certain angles as described on plan, and by that means showed the land as applied for by Hoggan to take in part of the townsite The description and plan prepared by Plaintiff both show the land claimed by Hoggan as being bounded on the south by the Newcastle Townsite and Government Reserve, or rather suburban lots. When the Plaintiff's plan is compared, Hammond admits the difference. H.A.B. Page 60 Q. 793-855.

H.A.B. Q. 819. Q. There is the plan. Does your description or your plan conform to that? A. No.

Mr. Pooley (to Mr. Mills): You do not claim any portion of that land laid out by the townsite?

Mr. Mills: Certainly not when the fee is in another person.

Mr. Pooley: That closes the Defendant's case.

115. If both Plaintiff and Defence are satisfied that the townsite is not encroached on, on what foundation does the learned judge build?

H.A.B. Page 19 Line 24. 106. Trial Judge: "In April, 1887, the Dominion Government conveyed the unsold portion of the townsite (as part of the railway belt) to the Defendant Company without notice of Plaintiff's claim."

(1) "The unsold portion of the townsite is not land in question."

(2). The President of the Railway Company was advised by the Hon. Thos. White, Minister of the Interior, of Hoggan's claim, and furthermore Mr. White was informed by the President that Hoggan was being settled with.

(3). The President offered Plaintiff fifteen acres of the land claimed by him, together with all his improvements, amounting to upwards of $4,000.

(4). No notice was required, as Plaintiff had applied to the Company, and action taken before expiration of four years from the passing of the Act, 1883.

The learned judge would have had all the above in evidence had he not religiously shut it out:

V.C.Co. MSS. 40. 118. Drake in the Vancouver Coal Company's correspondence states that: "In 1857 or 1858 the Hudson's Bay Company made a reserve for public purposes of 700 acres That part of this land was in 1863 laid out by the Colonial Department as a townsite as called Newcastle Town. The remainder of the land being held as a public reserve down to Confederation in 1870."

H.A.B. Page 99 Line 18-21. 119. The mysterious affair is that against all evidence to the contra the same Drake (now Justice Drake) in his judgment states: "The land taken up by the Plaintiff was part of a tract of 724 acres reserved in 1855 by the Hudson's Bay Company for general public purposes, and at the same time a reserve of 79 acres for Indians within the same block as the 724 acres, but not forming part of it as appears by Plaintiff's plan."

120. (1). The learned judge states on page 101, line 1, that the Court cannot say from the evidence where this reserve is actually situated. If, as the trial judge in the case of Waddington had stated in his judgment, that Green had *layed out* the reserves in question, how is it that the Court cannot tell where it is situated? I showed that Green did not lay out anything but the townsite, comprising in all 114.62 acres, and Justice Drake unwittingly confirms the statement of fact. By what authority does Justice Drake state that 79 acres was reserved for Indians in 1855? If there is an Indian reserve there at all it is 250 acres. The 79 acres is taken from the list of Indian reserves proposed in 1860, none of which were ever carried into effect as shown on "Exhibit N." The fact that all the tract in question passed to the Railway Company is absolute proof that the Government knew of no Indian reserve in that locality: W.A.B. Page 43 H.A.B. Page 90

"*This general reserve* was made under the authority of the Hudson's Bay Company Charter, and after the cancellation of that charter it was dealt with by the Colonial Government as a public reserve and *was laid out as a town site and called Newcastle town.* Town, and city and suburban lots were laid out and sold by the Government from time to time." "*An official map was prepared of this reserve,* and it has upon it certain defined lines of lots sold and unsold, surveyed and unsurveyed." H.A.B. Page 99 Line 22-27.

In short the above reads: This general reserve (containing 724 acres) was laid out as a townsite and called Newcastle town. On official map was prepared of this reserve.

Evidence of Gore, Surveyor-General, before Select Committee 1886: Journals, 1886. IX.

To Mr. Beaven: "The object in coloring the *map* Green is to designate the land surveyed by Green into lots in 1860. Green's survey is 114.62 acres." "There is no other official map of Newcastle Town, except the one I have produced that I am aware of."

Surveyor-General before Courts in 1890:

Q. Can you tell me whether the 724 acres have ever been surveyed? A. I cannot. H.A.B. Q. 667.

Q. This piece that you call the Newcastle Reserve—724 acres? A. I have not searched for and do not know of any survey having been made of it. H.A.B. Q. 668.

The entire judgments of both the trial judge and the full bench are of this charter.

The following from Chief Justice Begbie is the most ingeniously constructed paragraph among the judgments.

H.A.B. Page 95 Line 26,

123. "The whole of the land covered by these three Plaintiffs' claims was, so long ago as 1855, reserved partly for public purposes and partly as an Indian reserve. (1) In 1870 part of it was actually surveyed into town lots, (2) and an intended auction sale was announced and (3) it has ever since been termed the Newcastle Townsite; and in that year the Plaintiff Waddington actually purchased four of such lots after the Government survey at $5 per acre." The facts are:

Journals, 1886. XV.

(1). In 1870 Samuel Waddington applied for a tract of agricultural land north from the Millstone river, mostly swamp. His application was received and he had the tract (12 acres) privately surveyed by Mr. Mohun. (The above is what the learned judge mistook for town lots). Waddington, November 2nd, 1870, writes to increase his quantity and receives the following reply:

VICTORIA, B. C., Nov. 7th, 1870.

Journals, 1886. XVI

SIR:—In reply to your letter dated 2nd inst., I have the honor to inform you that I see no objection to your increasing your quantity as shown on rough sketch, upon your getting your land surveyed and paying for the same at the rate first agreed upon.

I have. etc.,

B. W. PEARSE,
Assistant Surveyor General.

Samuel Waddington, Nanaimo, B. C.

W.A.B. Q. 11

In evidence 1891, Waddington testifies that he applied for twenty acres originally. He however received a letter from J. W. Trutch, dated 2nd Dec. 1870, nullifying the letter previously received, but informing him that the lots would be surveyed in the spring and would be offered for sale by public auction and that then he would have an opportunity to purchase the land he required.

The promised survey and auction sale was never complied with and that is the entire evidence on which the Chief Justice led the Courts above to believe that this private survey of a tract of agricultural land was the real, actual survey (as promised Waddington), of a tract into town lots and that the intended auction announced was actually carried out and at which the Plaintiff Waddington actually purchased lots at $5 00 per acre (including timber, minerals and all substances whatsoever.) The learned judge here adds another to the long list of alleged dates as to when this land in question was reserved for a townsite, and as to Waddington having purchased town lots I quote from his own evidence that was not disputed in Court.

124. And what distance from these town lots? A. Oh, it is at least a mile away, I should think. W.A.B. Q. 64.

Q. You say that the land of 133 acres is *outside the surburban lots?* A. Yes, sir. W.A.B. Q. 71.

We had cleared all the land that is cleared now before 1882 and ditched and so on. Of course I have done considerable ditching since. W.A.B. Q. 73.

125. The following will convey some idea as to the ruling by the Court in the settlers cases in 1890. Notably in the evidence of Sir Joseph Trutch in the Hoggan case and the following in the Waddington case, both having been dealt with as joint cases. The following are such letters as could not be submitted by Plaintiffs although introduced by counsel for defence in Hoggan's case just previously.

In answer to Pooley, Mr. Hoggan testified as to having seen a letter from the Chief Commissioner of Lands and Works allowing Waddington to continue a squatter. Said letter signed by T. H. Williams. H.A.B. 192-197.

Mr. Pooley to Waddington: A short time ago I read a letter addressed by Mr. Williams to you, in which you were told to continue as a squatter. Is that so? A. Yes. H.A.B. Q. 519.

NANAIMO, Aug. 22nd, 1883.

DEAR SIR: Our member, Mr. Raybould, showed you an agreement of sale of the land I have been occupying previous to the lock-up. I desire to know (the railway question is settled) whether I can pay for the land according to former agreement and obtain my Crown Grant. Journals, 1886. LIX.

Yours respectfully,
S. WADDINGTON.

To the Honorable
The Chief Commissioner of Lands and Works.

VICTORIA, B. C., Aug. 27th, 1883.

SIR: In reply to yours of the 22nd inst. I have the honor to state, by the direction of the Chief Commissioner of Lands and Works, that the next meeting of the Provincial Legislature a bill will be introduced to deal with the lands now reserved for railway purposes, and until that time you can only continue as a squatter.

I have, &c,
(Signed) T. H. WILLIAMS.

S. Waddington,
Nanaimo, B. C.

A copy of the above letter, certified to by the Surveyor-General, was produced by Plaintiff's counsel.

Pooley: We do not admit it. Supposing Mr. Williams had written: "I will give you a Crown Grant of this a week hence."

Mr. Mills: That is all right if it appears on paper.

Court: I do not see why this evidence should not be admitted? (No objection being taken he again says): There is no discussion on the point here. Pooley takes the hint and remarks: "It comes to this that it is entirely contrary to all the letters written by the Chief Commissioner," but although he did not object (no doubt for the reason that in the case of Hoggan just previously the Attorney-General cited "Taylor" as authority for producing official copies of public documents as evidence in place of the originals, sustained), yet we find:

H.A.B. Page 46 Line 20.

Court: Then I take your objection.

Attorney-General (for defence): So far as its being a copy I suppose there is no doubt about that, but we object to the document.

Richards: We claim as a squatter as well as a pre-emptor or settler, and that merely shows we can continue a squatter.

Court: Well, it is only Mr. Smithe's statement, not a statement on oath. (Oath of office to the contrary notwithstanding).

H.A.B. Q. 100-128. Plaintiff had stated in evidence that the original had been sent to Ottawa. Letters had all been sent to Ottawa.

The following will show that it was understood by Plaintiff's counsel that the Williams letter would go in, and with that understanding they do not object to anything going in.

Mr. Pooley reads letter from Sessional Papers.

Court: Yes, he said so at the start, but Mr. Richards objected to it. (He would have liked him to do so).

Mr. Richards: I do not object, my Lord.

Mr. Mills: If they put the Sessional Papers in, or those paper, or whatever they may be called, you will find the Williams letter there.

Court: No, he mentions the letter that happened to be printed in the Sessional Papers that he requires for his cause, and so do you, and then, I suppose, you will agree to put them in.

Mills: I say let them all go in.

W.A.B. Q. 256. W. S. Gore called and sworn. Examination by Mills: You are the Surveyor-General? A. I am.

Did you have a person in the Lands and Works Department by the name of Thomas Herbert Williams? A. Yes. W.A.B. Q. 257.

Q. I believe (producing document) that is your hand writing? A. It is. W.A.B. Q. 259.

"I certify this to be a true copy of the document it purports to be a copy of." W.A.B. Q. 260.

Q. It is part of the records of the office, is it not? A. I presume so. I certify this to be a correct copy of the printed copy which your clerk handed to me. W.A.B. Q. 261.

The evidence given by Gore following 261 shows that it was not a correct copy handed him by the clerk, but a corrected copy, by the letter press the Journal copy is dated 1885 and the letter press 1883.

A. No, I did not examine the letter press. I sent a clerk in my office to see whether the date was correct in the printed copy or the written, etc. W.A.B. Q. 266

Court: You cannot say whether it is a copy of any letter in your office positively? A. No, sir. W.A.B. Q. 268.

Court: By whose authority is that document printed? A. By the authority of the Government. W.A.B. Q. 270.

Court: You corrected it on that? A. I did; and initialed it. W.A.B. Q. 271.

Mr. Pooley: That is part of the Journals. W.A.B. Q. 272.

Court: *Well, it is not objected to. You are sitting there.*

Attorney-General: We are waiting to take our objection at the proper time. We certainly have to object to that document, etc.

Mills: They put in that document to show the land was a reserve. We say this is evidence against that contention.

Richards: This is while the Provincial Government were the owners of the land.

Court: I know, but it has not been proved, and the copies of Sessional Papers published by the authority of the Government are no evidence at all. If that is so, why did Court previously allow the following:

Mr. Pooley reads copy of letters from Sessional Papers signed by J. W. Trutch addressed to Samuel Waddington, Esq., Nanaimo, B. C. Witness (Waddington): I received that letter, my Lord. W.A.B. Page 18

Here we find the Sessional Papers good enough as evidence for Defence, while in case of Plaintiff a copy from Sessional Papers

corrected and certified to by the Surveyor-General, is not considered as being evidence.

W.A.B. 273. Mr. Mills: Have you your subpœna in your pocket? Gore: No, I have not.

You are requested to produce a copy of that letter from our books, and you have not produced that here? A. I should have produced it if you had not brought me on instead. I told you I could not produce the original copy.

That is precisely what the Surveyor-General did when the Select Committee passed a special resolution calling for an important letter that had been withheld. He appeared before the Committee without the letter and explained that the letter book could not be spared. The Committee themselves went to the department and found the letter.

W.A.B. 275. Q. If I would make you a copy, you would certify to it?

Court (interjects): It is a misunderstanding, Mr. Gore would not mislead you.

Mr. Richards: It is a very important document, my Lord.

Court: I dare say it is. It is not proved. I am only ruling out that piece of paper, so far, when you do get the other document this comes out.

Mills then demanded that a copy be produced in accordance with the letter book. Can I re-call Mr. Gore.

Court agrees, but after Mr. Gore returns with a full-fledged copy, the Court again rules it out.

CHARACTER OF EVIDENCE GIVEN BY THE SURVEYOR-GENERAL, MR. GORE, WITNESS IN CHIEF FOR THE RAILWAY COMPANY.

H.A.B. Page 10 126. Paragraph 8 of Defence's statement: "The land mentioned in paragraph 13 of the Plaintiff's statement of claim include several lots in said Newcastle Townsite, laid off, sold and conveyed to various purchasers thereof by the Crown long prior to the passage of the Settlement Act aforesaid."

Journals, 1886. IX. 127. Evidence of Gore before Select Committee:

Pooley: Is the land applied for by David Hoggan and Samuel Waddington part of the land shown upon the official map of Newcastle? A. *Yes.*

H.A.B. 91-34. 128. From the judgment of trial judge: "But it was, and still is, part of the Newcastle Townsite."

Nature of evidence on which judgment was founded in 1890:

Court: You claim here that Mr. Hoggan, the Plaintiff, has 616
taken any of these lots that were sold? (No reply by Gore.) That his pre-emption covers these? (No reply by Gore).

Mr. Pooley: We have so stated in our statement of defence.

Mills: We do not claim those lots, my Lord, according to the map.

Court: Do you claim that some of the town or suburban lots 621
were covered by this alleged pre-emption? (No answer.)

Mr. Pooley: It covers both part of the suburban lots and part of the town lots.

Attorney-General: That shows six lots embraced in the Hoggan claim.

Court: You had better get that out in evidence from your witness. (Watch how they get it.)

Witness: There are six shown on the plan; there are only five on the registry.

It would almost appear that Gore had verified the last statement by the Attorney-General, Theodore Davie.

Are those marked with Roman numerals along the Millstone 634
river? A. Yes, sir, those are the suburban lots.

Court: Those are not claimed by the parties? Are they even claimed to have been trenched upon? (No answer).

Mr. Mills: No, not that, sir.

Court: None of the suburban lots you have drawn by the lines in this plan? (No answer).

Pooley leads Court off that line of questioning. The map here in question is the bogus map drawn by Hammond by direction of Pooley to show Hoggan on the townsite, and he aimed to have the map speak for itself.

Mills: When you say that the land claimed by Plaintiff 652
covers some of those town lots, tell me how you prove it? (No answer). Have you examined our map? A. I did not say the land claimed by the Plaintiff covers your town lots.

Would you look at the plan and see whether it does? I under- 653
stood you to say so. A. I have not seen it at all. No, I did'nt say so.

654 Q. The land there colored red is supposed to be outside the town lots of the Newcastle Townsite? A. The land colored red upon this (Hoggan's) plan does not cover the same ground that is marked "Newcastle" on this plan (Hammond's).

The Surveyor-General is forced to admit (as Hammond did) that the map prepared according to the instructions of the Hon. C. [illegible] Pooley does not show the same land as that applied for by Plain

To further show the value of the statment in the judgment of Justice Walkem, namely: "But it was, and still is, part of the Newcastle Townsite." I quote the following substantial evidence:

Elijah Priest called and sworn: Examined by Mills:

339 What is your occupation? A. Land surveyor.

341 Did you make the survey for Hoggan? I did.

344 Do you know that portion on the land that they call Newcastle Townsite? A. I do.

345 Do you know those lots they call the suburban lots? A. Yes.

346 Is the piece of land that Mr. Hoggan claims the right to purchase in this suit any part of the townsite lots? A. Not the town lots.

347 Or any part of the suburban lots? A. Nor any part of the suburban lots. That is as far as the original survey was made. (Namely, Green's survey of 114.62 acres).

348 What do you mean by that? A. On the official map.

If the Surveyor-General, who was perfectly aware of the facts, had come straight out with the truth the settlers would have had their land all cleared and contributing to the revenue of the Province. The land is as much theirs to-day as it ever was, and the question will never be settled until they get it.

HOW SIR JOHN A. McDONALD TREATED SETTLERS.

The following extract from proceedings of the House of Commons referred to *in letter*, "*North-West settlers.*"

Mr. Cameron, M. P., (Huron): "In moving for copies of Department regulations respecting withdrawal from homestead and pre-emption of all lands known as town reserves at Regina, Moosejaw and other places, said: He made the motion chiefly with the view of eliciting from the Government an explanation of its policy as regarded persons who had settled on the lands not open for settlement. He knew a young man who had settled near

Moosejaw; the lands were withdrawn, the surveys being incomplete for some reason or other, and he was about to move and leave his improvements, but he (Mr. Cameron) recommended him not to do so, his opinion being that the Government would deal fairly and considerately with him. (Hear, hear)."

Sir John McDonald: "I do not believe any one person has been ejected on the Townsites or Mile belt. The claims of every person will be examined and adjusted on its merits. Of course it is a matter of no consequence to the Government or to the Department of the Interior whether A or B gets any special lot. If the party who settles on the lot has a legal right, that right will be maintained. If he has an equitable right, I do not mean merely an equitable right as understood by law, but in a moral sense, that right will be respected."

David Hoggan

Mar 17th 1899 Nanaimo B.C.